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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES ) CR. NO. 04-10082-NG  
VS. ) COURTROOM NO. 2  
ERIC E. RESTEINER, ) 1 COURTHOUSE WAY  
DEFENDANT BOSTON, MA 02210

FINDINGS OF FACT

SENTENCING DAY 2

MAY 16, 2006

2:42 p.m.

BEFORE THE HONORABLE NANCY GERTNER  
UNITED STATES DISTRICT COURT JUDGE

VALERIE A. O'HARA  
OFFICIAL COURT REPORTER

1       A P P E A R A N C E S:

2               United States Attorney's Office, by DIANE C. FRENIERE,  
3       ASSISTANT UNITED STATES ATTORNEY, One Courthouse Way,  
4       Suite 9200, Boston, Massachusetts 02210, for the United  
5       States;

6               Amabile & Burkly, P.C., JOHN A. AMABILE, ESQ.,  
7       380 Pleasant Street, Brockton, MA 02401, for the Defendant.  
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1           THE COURT: Okay. Let me first clarify some of  
2 the things that I had said the last time because I think  
3 Mr. Amabile is right in some regards. First, I'm a well  
4 outspoken critic of the Sentencing Guidelines because  
5 oftentimes when you add up the column of figures, you get to  
6 a number that is so out of proportion punishment-wise to the  
7 individual in front of you, but as I said, this case struck  
8 me as the same criticism but in the other direction.

9           When I added up the column of figures, it seemed  
10 to be inadequate punishment given the scope of what I saw,  
11 but to some degree my position is consistent, I think that  
12 the guidelines don't adequately account for individual  
13 characteristics, and most of the time, 9 times out of 10  
14 it's because they are over the top in punishment.

15           This was a situation which struck me differently,  
16 and I'm not saying that this is payback for all the times  
17 that the guidelines have been excessive, I'm saying that  
18 when I look at this from the perspective of the nature of  
19 the crime, not the column of figures, this is a more serious  
20 variety of mail fraud than I typically see, and that's  
21 really ultimately what sentencing is about. You're drawing  
22 distinctions, people commit crimes, and there's a range of  
23 ways that they commit them and then you look and you say is  
24 this at one end or is this at the other end? That's a  
25 retribution model, but, nevertheless, that's one way of

1 looking at it.

2 I agree with the guideline computation then about  
3 the amount, but when I look at that in terms of what  
4 Mr. Resteiner did, here's the analysis: I've had lots of  
5 mail fraud cases both as a judge and as a lawyer, and  
6 typically one measure is how many people were harmed, what  
7 was the nature of the harm? Well, this is a harm that is  
8 off the top, that is extraordinary kind of harm to people.

9 This was an abuse of trust. This was an  
10 extraordinary abuse of trust, this is not just the abuse of  
11 a fiduciary relationship, this was the abuse of a  
12 relationship of a church relationship. He was a  
13 journal-listed practitioner, a healer. The source of his  
14 victims were the people that he came across in the church,  
15 so when the guidelines talk about abuse of trust, there's  
16 abuse of trust, and then there is extraordinary abuse of  
17 trust, and when the guidelines talk about harm, there is  
18 ordinary harm, and there is extraordinary harm.

19 I was thinking of U.S. v. Mueffelman, which is not  
20 a case that Ms. Freniere had tried, but in Mueffelman the  
21 defendant did what he could to get people who had low credit  
22 homes, and at some point he completely misjudged the scheme  
23 and he kept on taking new clients, and people ultimately  
24 lost money, but there was certainly a period of time when he  
25 was working day and night to try to get this business going

1 and it fell apart.

2 This is a case in which there is no pretense of  
3 investment, there was no pretense of a business. This was  
4 taking money from people and not just putting it in his  
5 pocket to help a sick relative or to put it in his pocket to  
6 help a, you know, troubled son or a troubled daughter, this  
7 was putting it in his pocket so that he could have a castle  
8 in Switzerland formerly owned by the Shaw of Iran. This is  
9 a degree, you know, of harm and a scope of a crime that is,  
10 as I said, in the range of mail fraud, this is way at the  
11 most severe end.

12 I recognize that the money laundering issue should  
13 not enter into the calculus as a question of law, and I'm  
14 not allowing this to enter into the calculus. I agree with  
15 you, Mr. Amabile, on reflection that the extradition process  
16 is a constitutional process in part, and so when a country  
17 doesn't extradite someone because they don't have a  
18 comparable crime, I can't consider it, and that to some  
19 degree puts a lid then on what this sentence would be  
20 because it cannot be the same as it would have been had he  
21 been extradited for money laundering.

22 So the scope of this scheme is in the range of  
23 mail fraud far worse than everything I've ever seen. When I  
24 looked at comparable cases, and I asked probation to pull  
25 comparable cases, in fact, mail fraud is all over the map.

1 There's no correlation between amounts and sentences so that  
2 was not a help to me, and when I looked and I had mentioned  
3 that I had sat on the Bleidt case where the individual got  
4 108 months, and that was because it was money laundering and  
5 mail fraud, but that it is a substantial mail fraud scheme  
6 for which the guideline range of 25 and criminal history 1  
7 is inadequate because this is the far worse end.

8 Probation in their presentence report suggested an  
9 aggravating role adjustment of 4 which had not been in the  
10 plea agreement but which reflects a situation where  
11 somebody, it doesn't matter whether they were actually  
12 supervising people, it includes people who didn't organize,  
13 lead, manage or supervise but who, nevertheless, exercised  
14 management responsibility over the property, assets or  
15 activities of a criminal organization. I actually think  
16 that fits, and that would lead to an increase of four  
17 levels.

18 I can't go any higher than that. I appreciate  
19 that for a couple reasons, as I said, as a matter of law, I  
20 can't go any higher because the sentence has to reflect the  
21 fact that he was not extradited. That is the sealing. I  
22 can't go any higher because the government's plea agreement,  
23 ironically, which is that to some degree when a judge asks  
24 to depart without either party framing it, it's like jumping  
25 off a cliff without a parachute. I have no framework. The

1 people who know the most about this are the ones who are  
2 then not participants in this, so I can't go any higher than  
3 what I said 29-1 is 87 to 108, and, as I said, I can't go  
4 any higher than that because, in fact, I can't identify a  
5 number that correlates with these other mail fraud schemes.  
6 There's really no coherent measure.

7 I agree with you, Mr. Amabile, that we have spent  
8 our time too much focusing on punishment and retribution,  
9 and we've lost sight of the rest, but there are offenses  
10 that are trumping offenses. There are times when you look  
11 at the offense, and you say, you know, that's the most  
12 significant thing. The most significant thing is the scope  
13 of the offense. The most significant thing is the  
14 punishment that is proportional to the offense. The most  
15 significant thing is to focus on the offense as compared to  
16 other offenses, and that's the fair way of looking at  
17 this.

18 One of the problems with the guidelines is that we  
19 stopped giving narratives, we stopped telling stories about  
20 why people do what they do, and that's why I asked you, why  
21 did he do this? And this offense and this victimization of  
22 these people is so extraordinary for which there is no  
23 reason that I think the sentence has to reflect society's  
24 profound indignation for them, profound indignation, but I'm  
25 going to be within the guideline range, and the guideline

1 range is 87 to 108.

2 I was about to come out here and say 96 months,  
3 but I will not, I think, in deference to the fact that  
4 Mr. Resteiner cooperated to a degree and I think cooperated  
5 to a degree in a way that made it easier for the government  
6 actually to find out not only about other people but also to  
7 find out about the victims, and in that respect, it's much  
8 like the Bleidt case as well. That has to count for  
9 something. When he was caught, he helped them figure out  
10 who the victims are, but I will sentence him to 87 months.  
11 It is a guideline sentence with the enhancement of four  
12 levels for aggravating role adjustment, and it's a sentence  
13 it seems to me that reflects the purposes of punishment  
14 including notably retribution.

15 The sentences in this court for mail fraud range  
16 from, really range from probation to 120 months, literally  
17 from probation to 120 months, so I couldn't possibly, that  
18 wasn't going to help. So the top here, just to reiterate, I  
19 can't go any higher, although I would have considered it  
20 because I can't have a sentence that reflects in any way the  
21 money laundering offenses which are out of this case, I  
22 can't go any higher here because I am bound to some degree  
23 by the fact that there isn't a party in the case asking for  
24 more, and that constrains how far I can go, and I can't go  
25 any higher because I can't really come up with a rational



1 measure of what higher would look like other than my  
2 indignation of the case which I understand shouldn't count  
3 any longer in sentencing, if it ever should.

4 So, Mr. Resteiner, would you please stand. I'm  
5 going to sentence you to 87 months which is to be on each  
6 count of conviction to be served concurrently. I recommend  
7 that the Bureau of Prison grant you credit for all the  
8 periods of your official detention including the period in  
9 Singapore it was from the date of your arrest on  
10 February 10th, 2004.

11 Upon your release from imprisonment, I'm going to  
12 place you on supervised release for two years on each count  
13 to run concurrently. When you're released, there will be an  
14 immigration detainer on you. The odds are that you won't be  
15 released to the street, but if you are, you report  
16 immediately to probation in the district to which you've  
17 been released. You're to make restitution to the victims  
18 listed in the chart that will be attached to the judgment in  
19 the amount of \$33,949,762. Interest will be waived.

20 Payment shall be made to the Clerk of the U.S.  
21 District Court for transfer to the various victims in the  
22 amounts specified by the chart. I endorse the U.S.  
23 Attorney's efforts to get the proceeds from the SEC action  
24 applied to this case, and to the extent that there's  
25 anything that this Court can do to effectuate that, I will

1 do.

2 Any payment made that is not payment in full shall  
3 be divided proportionately among the victims named. The  
4 restitution shall be paid immediately. Any balance  
5 remaining upon the defendant's release from incarceration  
6 shall be paid according to a repayment schedule. Should you  
7 change your mailing or residence address, this really  
8 assumes you'll get out, but, as I said, you're likely  
9 deported, if your mailing address changes, you have to let  
10 the U.S. Attorney's Office know while any portion of  
11 restitution remains unpaid.

12 I will not impose a fine because you're not able  
13 to pay a fine, and a fine would take away from the money due  
14 the victims in this case. If you wind up on supervised  
15 release, while on supervised release, you are not to commit  
16 another federal, state or local crime. I will not require  
17 DNA collection at all. The issue is pending in court, and I  
18 agree with Judge Keeton that we shouldn't be collecting  
19 DNA.

20 You're to comply with the standard conditions,  
21 and, in addition, you're prohibited from possessing a  
22 firearm or other dangerous weapon. If ordered deported,  
23 you're to leave the U.S. and not return without the prior  
24 permission of the Secretary of the Department of Homeland  
25 Security. As I said, you're to pay the balance of the

1     restitution. You're prohibited from incurring new credit  
2     charges without the approval of probation while any  
3     financial obligation remains outstanding, and you're to give  
4     probation access to financial information which may be  
5     shared with the financial litigation unit of the U.S.  
6     Attorney's Office. There's a special assessment of \$700  
7     which shall be due immediately.

8             So it is a higher sentence than the parties have  
9     jointly recommended, but it is a sentence that I think  
10    adequately, well, under the circumstances adequately  
11    reflects the purposes of punishment. As I said, I couldn't  
12    envision mail fraud that wreaked more havoc on people's  
13    lives without any imaginable reason than this, and it seems  
14    to me that you needed to be sentenced in a way that  
15    reflected that.

16                     - - - -